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APPLICATION GRANTED
SO ORDERED 
VERNON S. BRODERICK
U.S.D.J. 8/29/2018

The Honorable Vernon S. Broderick
United States District Judge
Thurgood Marshall Courthouse
40 Foley Square, Room 415
New York, New York 10007

Re: Barry Fingerhut, et al
Case #09-CV-10429 (VSB)

Dear Judge Broderick:

On August 6, 2018, I had an appearance before the Honorable Shlomo S. Hagler at the Supreme Court of the State of New York regarding my Article 78 Proceeding against the District Attorney's office to unseal the records to support the Affirmation which relates to the above referenced case. A copy of the minutes from this appearance are attached for your information. At this appearance Judge Hagler instructed Valerie Figueredo, Esq. to assist me in obtaining the needed information to help me provide you with new evidence to reopen the case against Barry Fingerhut in your Court.

We have a Court date scheduled before Judge Hagler on November 5, 2018. You previously granted me an extension to September 1, 2018 and I respectfully request that you grant me another extension after my appearance on November 5, 2018.

I would very much appreciate your granting this request.

Respectfully submit


Heidi Rapillo

I am in receipt of Plaintiffs' letter dated August 14, 2018. (Doc. 124.) Having heard no objection, Plaintiffs' request is granted and the deadline for Plaintiffs to file their motion pursuant to Federal Rule of Civil Procedure 60(b), along with their supporting papers and any new evidence, shall be extended until December 5, 2018.

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART - 17

-----X
HEIDI RAPILLO,

Plaintiffs

INDEX NUMBER:
101803/2017

-against-

DISTRICT ATTORNEY OF NY,

Defendant

-----X
60 Centre Street
New York, New York 10007
August 6, 2018

BEFORE:

HONORABLE: Shlomo S. Hagler, JSC

APPEARANCES:

Heidi Rapillo
Plaintiff Appearing Pro Se

New York County District Attorney's Office
One Hogan Place
New York, New York 10013
By: Valerie Figueredo, Esq.

Delores Hilliard
Official Court Reporter

dh

Proceedings

COURT CLERK: Index Number 101803/2017.

In the matter of H E I D I R A P I L L O
versus D I S T R I C T A T T O R N E Y O F N E W
Y O R K.

THE COURT: Good afternoon.

This is an Article 78 seeking to compel respondent
to provide certain records pursuant to the Foil law.

Counsel, are you ready to proceed?

Are you counsel?

MS. RAPILLO: I'm Heidi Rapillo. I'm representing
myself, pro se.

THE COURT: I apologize, I thought you were the
attorney.

So, you're ready to proceed without an attorney?

MS. RAPILLO: Yes.

THE COURT: And counsel, you're ready to proceed?

MS. FIGUEREDO: Yes.

THE COURT: Ms. Rapillo, tell me why you're seeking
such information?

MS. RAPILLO: I'm seeking, the purpose of my
Article 78 is to release certain information pertaining to
the affirmation to be relieved.

I filed a Form 60B in Federal Court with Judge
Broderick to reverse his decision. And he basically said
that if I could bring further evidence to show how my money

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2 was transferred to Mr. Fingerhut that he would reconsider
3 his decision.

4 So, it's a civil suit that has been going on for
5 about 10 years now.

6 THE COURT: Why couldn't you just subpoena the bank
7 accounts of this Mr. Fingerhut that he received it or not or
8 your own bank accounts?

9 Because, I read the papers. I'm just curious why
10 you couldn't simply do that.

11 MS. RAPILLO: I don't think I'm able to do so. I
12 have his account information.

13 THE COURT: You are. All you need to do is get a
14 subpoena from the judge and the judge would then order the
15 records transferred to the court. And it would be available
16 for him or her. It is a simple process.

17 I'm not trying to help you. I'm just curious why
18 you just didn't do this simply. We do subpoenas all of the
19 time for bank records.

20 MS. RAPILLO: But, now because it occurred back in
21 2006.

22 THE COURT: Oh, they may not have the bank records
23 anymore; correct. They are not required to keep it that
24 long. They are probably not available.

25 Now, I see what the issue is. I knew that it
26 sounded too simple. That's why I had the curiosity.

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2 It's not relevant to this, but I was just curious
3 why you came here and didn't just go to the judge and get a
4 subpoena and you would sidestep the entire process. And if
5 the material is necessary the court will, and I have on such
6 an occasion provided that information via subpoena with
7 document production.

8 Okay. So, let's go back to this case.

9 MS. RAPILLO: Okay.

10 THE COURT: You're seeking records from the D.A.'s
11 office. And what particular records are you seeking?

12 MS. RAPILLO: The records that pertain to the
13 affirmation that show how my \$200,000 went, once it was
14 wired to Barry Fingerhut's business partner, David Holzer,
15 was directly transferred into Mr. Barry Fingerhut's personal
16 account. So, our money being transferred to his personal
17 account instead of being invested in entities that they
18 promised to.

19 THE COURT: Anything else you want to add?

20 MS. RAPILLO: Yes. I just wanted to state that the
21 D.A. claims that I am not legally entitled to this
22 information and that I did not adhere to the procedural
23 requirements. But, I believe I did.

24 I have documentations from their office that states
25 that I did appeal. And that they responded and the
26 documents were declined. I believe I did take the

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appropriate steps to do so.

THE COURT: Okay. Thank you.

Ms. Figueredo, counsel, in opposition.

MS. FIGUEREDO: In her most recent request from October, 2017, Ms. Rapillo seeks 5 separate categories of documents.

As to all of those categories they are duplicative of a request she had made in 2016. Those requests were never administratively appealed. And therefore, she didn't acknowledge her administrative remedies.

So, our first line of attack is why we are not required to produce these documents is that she should have administratively appealed.

THE COURT: Let's do that one last. Let's do the substantive.

MS. FIGUEREDO: As to the merits as to why we are not required to produce the documents, the bulk of what she wants are documents that show how her money was transferred into these accounts were all documents obtained in a Grand Jury subpoena. Those we are not authorized by Statute to release without a court order. And she simply does not have a court order requiring that disclosure.

THE COURT: Did you ever go back to the judge and try to get a court order to get those records?

MS. RAPILLO: No. I thought this was the

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2 appropriate way to do so.

3 You mean to, Judge Broderick?

4 THE COURT: Right. Grand Jury records are
5 confidential unless the court releases it.

6 MS. RAPILLO: But, the Grand Jury minutes were
7 already released.

8 THE COURT: I didn't hear you.

9 MS. RAPILLO: If the Grand Jury minutes were
10 already released --

11 THE COURT: What does that mean, the Grand Jury
12 minutes? You have access to the Grand Jury minutes?

13 MS. RAPILLO: No. But, I believe that they were
14 released.

15 MS. FIGUEREDO: So, my limited understanding is
16 that they were released to the defendant in the course of
17 his proceeding. But, that would be different than releasing
18 them to a 3rd party.

19 THE COURT: The minutes are not the same as the
20 back-up information, as well.

21 MS. FIGUEREDO: Correct.

22 THE COURT: So, let me explain.

23 MS. RAPILLO: Okay.

24 THE COURT: The minutes are simply a transcript of
25 what transpired in the Grand Jury.

26 MS. RAPILLO: All right.

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1 THE COURT: You have that information or you don't
2 have that information?

3 MS. RAPILLO: I do not have that information.

4 THE COURT: So, that's what counsel just said. You
5 would not be privy to that.

6 The defendant may have access to it depending upon
7 what the court does. And I am not getting into the criminal
8 law now. It's beyond the purview of this case.

9 What you're seeking is more than that. You're
10 seeking any document that may be put into evidence before
11 the Grand Jury or something that the D.A. has relied upon
12 that was submitted to the Grand Jury.

13 And counsel is saying that absent a court order
14 from a judge you cannot get it. That is subject to FOIL.
15 That's what counsel --

16 I think that's what you are saying; is that
17 correct?

18 MS. FIGUEREDO: That's correct.

19 The Public Officer Law 87 exempting the disclosure
20 of documents that are protected by Statute, Criminal
21 Procedure law 192.25 subsection 8. A document obtained in a
22 Grand Jury subpoena is just Grand Jury evidence.

23 So, what she seeks in her FOIL request, bank
24 statements, copies of wire transfers and checks, all of that
25 information would have been obtained via Grand Jury
26

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subpoena.

THE COURT: Ms. Rapillo, counsel is saying you cannot go into it.

The problem you're going to have now, it is 10 years later. The Court case is probably closed; correct? Long closed.

MS. RAPILLO: But, you know, this is my issue. Is that when this occurred back in 2008 we were told by my own investigator that my funds that were then turned over in another separate document to Mr. Fingerhut I approached the ADA and I said, this man is just guilty. He said, correct, he does have the money. You have to wait until this case is closed and sue him civilly.

Now, I feel they both perpetrated fraud. I'm not going to argue that today. I'm sure you don't want to hear that. I feel both are criminal. I believe one walked into the D.A.'s office, threw the other one under the gate. One got immunity and one took the fall.

The point is the judge allowed me, if I can prove further evidence with the affirmation that has been public. I would just like, if possible, the documents that pertains to that. Just the \$200,000 that David Holzer transferred to Barry's personal account, my \$200,000. I don't seek anything other than that.

I would even accept if it was redacted documents.

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2 Just anything that I can have to possibly allow Judge
3 Broderick, which he has allowed me to achieve relief.

4 I mean, I just feel that the D.A.'s office should
5 assist me somehow.

6 THE COURT: Did you ever make a direct request to
7 the D.A.'s office, not through FOIL?

8 MS. RAPILLO: Yes, we have made many requests. I
9 have made tons of phone calls. I was even told by Christine
10 Payne (phonetics), who is not at the D.A.'s office anymore.
11 She was shocked to hear that I had lost the case and why
12 wouldn't they release the information to me.

13 I understand that if it is sealed. But, there has
14 to be something that you can release to me that pertains to
15 my money. Because, this man sold everything in Greenwich,
16 Park Avenue, as soon as he was hit with my lawsuit. And he
17 moved to Arizona, a homestead state. So, he is protecting
18 himself. And he is probably doing the same thing there.
19 And it is really not fair, because we lost everything.

20 THE COURT: Ms. Rapillo, I'm trying my best --

21 MS. RAPILLO: I know. I'm sorry.

22 THE COURT: To look at this in a way that would
23 give you some redress and some relief.

24 Is there any mechanism? Let's go beyond FOIL. And
25 I know this is probably outside of the purview of this case.
26 Is there a mechanism whereby a victim can get information to

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try to obtain the funds that were stolen by the defendant in the case?

MS. FIGUEREDO: Because the documents were obtained via the Grand Jury process her only, the only mechanism for obtaining this document would be to seek an application in Criminal Court, the same Grand Jury judge who would then issue the order.

THE COURT: But, the case is closed. She still has the ability to do so?

MS. FIGUEREDO: I believe she could just file the application and it would be assigned to the current Grand Jury judge.

THE COURT: I'm going to adjourn this case. Why don't you try doing that?

MS. RAPILLO: To contact Judge Farber?

THE COURT: Whoever the judge was on the case.

MS. RAPILLO: Yes, Judge Farber.

THE COURT: I'm not sure if there is a time limitation to do this. It is not something that I regularly do.

I know I have had this before. And I believe you can go back to the judge that was the judge that presided over the criminal matter.

MS. RAPILLO: Okay.

THE COURT: And make an application to unseal the

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2 records, because you are the victim. It is your record,
3 essentially, that you want to prove that this person took
4 the money.

5 Quite frankly, I think he plead guilty in the
6 matter. So, it should not be that difficult to at least put
7 your point across that the defendant, A, is there a judgment
8 you have in Criminal Court? Was there a judgment against
9 Mr. Fingerhut?

10 MS. RAPILLO: No, there isn't a judgment, no. I
11 lost that case. And that's --

12 THE COURT: I'm talking about in Criminal Court.
13 Sometimes, the Criminal Court judge requires, as a
14 part of the sentence there is a judgment or requires that
15 you give back and pay the proceeds of the theft.

16 MS. RAPILLO: But, he claims he has nothing.

17 THE COURT: That doesn't matter. There may have
18 been a judgment entered against him in Criminal Court for
19 the amount of the thefts.

20 MS. FIGUEREDO: There was a Criminal Court action.
21 I think that was also.

22 THE COURT: I'm sorry, I can't hear you.

23 MS. FIGUEREDO: There was a Civil Court
24 interaction, which I think has also been resolved. I'm just
25 not sure how much they recovered, if anything. We recently,
26 when Mr. Fingerhut -- Mr. Holder handed a check for 3,000.

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2 Then his business partner, Fingerhut, gets 6, 7 times the
3 amount.

4 So, we received a check last week for 300 and
5 change.

6 THE COURT: You basically got nothing back.

7 MS. RAPILLO: Correct.

8 THE COURT: So, what I suggest is let me adjourn
9 this, let me keep this going.

10 I would ask that the D.A. assist in any way Ms.
11 Rapillo. And maybe you can even join in the application to
12 get this release. Because, it sounds like this is fair and
13 right. Even though you may be correct legally that it's
14 protected by the secrecy of the Grand Jury.

15 And I'm the first one to say that I wouldn't invade
16 the Grand Jury deliberations, I cannot. However, we're all
17 for justice. And I want to do justice for Ms. Rapillo. And
18 the D.A.'s office even prosecuted this. You know more than
19 me about the injustice that Ms. Rapillo went through.

20 I strongly recommend you can bring it to your
21 superior, you can order the transcript, that you assist Mr.
22 Rapillo to get the judge to unseal it. Therefore, either
23 she can get the records directly from you or we can go back
24 and change the position if it's no longer sealed.

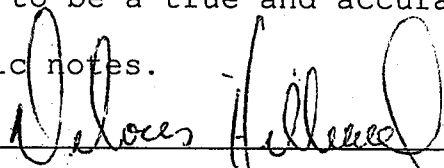
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That's the right thing to do.

This matter stands adjourned.

MS. RAPILLO: Thank you.

Certified to be a true and accurate transcription
of said stenographic notes.



Official Court Reporter

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